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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY, ET AL.,

Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

H. H. CREEKMORE,
C. L. HESTER,
C. R. BOLTON,
Counsel for Appellee.

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Appellants,

vs.

J. S. LOVE, SUPERINTENDENT OF BANKS OF THE STATE OF MISSISSIPPI.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

STATEMENT OF GROUNDS AND MATTER MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, AND MOTION TO DISMISS THE APPEAL HEREIN.

Appellee submits, in compliance with paragraph 3 of Rule 12, Revised Rules of the Supreme Court of the United States, as amended May 31, 1932, the following statement of grounds making against the jurisdiction of this Court asserted by the appellants in this cause.

1*f*

(1)

Mrs. Lorene Roberts Tolman, referred to in appellant's statement of facts showing jurisdiction, is not now, and has never been a party to this litigation, filed no pleading in the cause, and no question, Federal or otherwise, has been raised in her behalf prior to filing of statement of facts showing jurisdiction.

(2)

When the proceeding was instituted in the Chancery Court of Lee County, Mississippi, which culminated in the decree of the Supreme Court of Mississippi, appealed from herein, the Peoples Bank & Trust Company owed no debts to correspondent banks. (Record, page 204, and also opinion of Supreme Court of Mississippi.)

(3)

The plan of dealing with stockholders' liability is more advantageous to appellants than ordinary liquidation would have been. (Record, page 252-254, and Opinion of the Supreme Court of Mississippi.)

(4)

Appellants consented to hearing in vacation (Record, pages 179-180).

At the time the Peoples Bank & Trust Company, of Tupelo, Mississippi, was closed for liquidation on December 24, 1930, proceedings thereon were had under Section 3817, of the Mississippi Code of 1930, which section was originally enacted by the Legislature of 1914 and had continued in force up until that time. This Section 3817 is quite a lengthy statute, and for that reason a copy thereof is attached hereto as "Appendix 'A'" instead of being

copied into this statement. This statute provides an elaborate scheme for the liquidation of insolvent State banks, and that the same shall proceed under the jurisdiction of the Chancery Court of the County in which the insolvent bank is domiciled, the Superintendent of Banks being the statutory liquidator and subject to the jurisdiction of said Chancery Court. The proceeding is in reality a receivership with the Superintendent of Banks named as the statutory receiver. The statute is very broad in its scope and among other things provides:

> "The Chancery Court or the Chancellor in vacation shall have full jurisdiction to make any and all orders in the course of liquidation proceedings."

This statute, as construed by the Supreme Court of the State of Mississippi, has been held to be remedial in its nature and object and should receive a liberal construction. *Christensen* v. *Merchants and Marine Bank of Pascagoula, Miss.*, 150 So. 375.

Under the existing law, the creditors of an insolvent bank were limited in their recovery to the amount that might be realized out of the liquidation proceedings as provided by said Section 3817, except originally the right to be paid any remaining balance out of the guaranty fund as provided by law. This guaranty fund was abolished prior to the closing of the Peoples Bank & Trust Company, and, therefore, had no bearing on the matters affected by the liquidation of said bank.

When the bank closed for liquidation, it was largely indebted for bills payable and for public moneys, which were preferred claims under the laws of the State of Mississippi, and the greater part of its best assets was pledged as collateral to secure the payment of the said bills payable. After a lapse of more than two years, these bills payable had been paid off and such of the assets as were pledged as collateral and had not been collected and consumed in the

payment of said bills payable were again free assets of the bank. In May, 1933, the Superintendent of Banks of the State of Mississippi, who was in charge of the liquidation of the bank, filed a petition in the Chancery Court of Lee County, Mississippi, under the jurisdiction of which said bank was being liquidated, in which petition it was sought to reopen the bank. This petition was filed not only under the provisions of Chapter 251 of the Laws of Mississippi of 1932, as alleged in the Statement of Facts by Appellant, but it was made a further ground of the petition that not only had the plan for the reopening of the bank been approved by more than three-fourths of the creditors of said bank, but further that the plan for the reopening of the bank was to the best interest of the depositors and creditors of said bank, and that more would be realized thereby than would be realized by them from a continuation of the bank in liquidation. That the assets of the bank which were more readily collected had been collected and if the liquidation continued the relative cost of collection would be increased without compensating benefits which would accrue through the handling of the same by an open bank. That the liquidation was a virtual receivership, and that the assets of said bank were being administered by the Chancery Court of Lee County, Mississippi, for the benefit of all depositors and creditors and their interest in said assets was subject to the action of said court, and the only resource to which depositors and creditors might look for the collection of their deposits and claims, all of which were then under the jurisdiction of said court. The petition further alleged that the interest of all depositors and creditors would be best promoted by the reopening of the bank according to the plan set out in the petition and offered to make proof thereof, and prayed that the court acting for all the creditors would authorize the reopening of the bank

as it had power to do by jurisdiction over it in Receivership, and furthermore, the petition concluded with the prayer for such general relief as to the court might seem right and proper (R. 17). It might be stated at this time that such proof was offered in behalf of said petition, and although the appellants were present at the hearing and given an opportunity to offer proof to the contrary, offered none, and the court found from the proof that the best interest of all the creditors would be best promoted by the reopening of the bank, and entered a decree therefor with elaborate provisions for the protection of all the interests of the creditors. This finding of fact by the lower court that the interest of all the creditors would be best promoted by this plan was affirmed by the Supreme Court of Mississippi which also adjudged this to be a fact from the record.

There was attached as an exhibit to the petition a Depositor's Agreement which was signed by more than 75% of the depositors of said bank praying for the reopening of the bank. In the Statement of Facts purporting to show jurisdiction, appellants have omitted certain pertinent parts of this Depositor's Agreement which refute much of their complaint with reference to this procedure. These omitted parts were express authority for the action taken in the reopening of the bank. Not only does the Depositor's Agreement set out the parts quoted by the appellants, but further, after stating that the signer is a depositor for a designated amount, recites:

> "In consideration of the reopening of said bank the benefits to accrue to me, or to us, by virtue thereof, hereby agree as follows:
>
> (1) That said bank may be reopened under and subject to such plans as may meet with the approval of J. S. Love, Superintendent of Banks, the Chancery Court of Lee County, or the Chancellor (in vacation),

and the Directors of the Peoples Bank & Trust Company.

(2) That I, or we, are to receive 25% of such balance as follows:"

Then it recites the portion of the agreement set out in appellants' statement. Following the statement quoted by appellants is this further provision omitted by appellants:

"(8) I hereby authorize the Superintendent of Banks of the State of Mississippi with the approval of the Chancery Court of Lee County, to act for me in further consummating the reopening of the Peoples Bank & Trust Company, and in making contracts with the reopened bank in conformity with this agreement."

It thus appears that not only did the depositors signing this agreement make certain specific agreements, but that they recognized that every detail of a plan for reopening a bank could not be set out within the practical limits of a Depositors Agreement, and further, that authority must be vested in someone to meet conditions as they arose, and by the terms of Section 8 authorized the Superintendent of Banks of the State of Mississippi and the Chancery Court to act for them, and also by Section 1 agreed that the bank should be reopened on a plan to meet with the approval of the Superintendent of Banks and the Chancery Court, the two authorities designated by the laws of the State to look after the interest of the depositors. When it is considered that the Depositor's Agreement was not purported to be the iron clad terms of the reopening of the bank, but vested authority and discretion in the regularly constituted authorities, the facts alleged in appellant's statement to be unlawful and contrary to the agreement take a different aspect.

In undertaking to assert jurisdiction on the ground of appellants having been deprived of property without due

process of law, or compensation having been made therefor appellants set out many figures which are not supported by the record. They charge that there is unaccounted for in the reopening of the bank $152,485.90. This charge was fully and satisfactorily refuted before the Supreme Court of Mississippi, but being a matter of reconcilement of statements it is not set out in detail here and is attached as "Appendix 'B'," in case the court desires to consider it in detail. Suffice it to say, a greater part of this amount was $109,000.00 expense account incurred by the liquidation which had been carried by the liquidation statement in the assets column. It needs no argument that an expense account is not an asset, and so in transferring the statement to the reopened bank this item which served only to make the total assets column was eliminated as worthless. This was true as to the other items eliminated, all of which is explained in detail in "Appendix B'" should reference to them be desired.

An effort to substantiate the claim of being deprived of property is attempted in setting out a calculated amount required to pay 5% agreed to be paid upon the reopening as being different from the amount found by the court in its decree to be necessary. The amount that would be necessary to be paid in cash on the reopening of the bank was set out in the petition which was before the court on the hearing, and the appellants had every opportunity to inquire into the correctness of it before the court and make any objections they desired thereto, and failing so to do they cannot now substitute their calculation for the finding of the court. If the amount set out in the decree should be erroneous, it would be only an error of fact and such does not confer jurisdiction in this case. The amounts set out by the decree are correct, and there is no error therein. The error is in appellants' calculations in omitting matters

which had been directed by the court to be paid in full, including preferred claims and accounts of $5.00 and under, which was ordered paid as a matter of practical operation and economy on account of the smallness of them. On the other hand, the decree expressly sets out the amounts to be paid by the reopened bank both as demand deposits and deferred deposits and requires that the reopened bank shall assume liability therefor. Liability being assumed, the reopened bank received nothing thereby for which it was not to account, and there was, therefore, no dissipation of assets as charged by appellants in the statement of facts. Likewise, there is no basis of fact in the record to show that three-fifths of the 5% to be paid on the reopening of the bank was derived from the Depositors Protection Fund. Likewise, the statement that on the reopening of the bank $102,302.98 in cash from the liquidation was turned over to the reopened bank, is incorrect. The decree (R. 99) shows the amount of cash that was turned over to the bank upon reopening, setting out in detail, to be $75,977.36 plus cash held in trust on account of creation of capital structure, $14,016.56; cash collections held as Special Reserve, $12,309.06; the total of all of which makes it $102,302.98, cash in the bank upon the reopening, but over $26,000.00 of which was not available for the payment of dividends. Therefore, the using of such figure by the appellants leads to an erroneous conclusion. The same is true of the statement that there were carried into the reopened bank bonds in the sum of $57,500.00. It is claimed by the appellants that these could have been sold and this much additional cash made available. Such is not supported by the record. The record shows that these bonds were not readily collectible and were charged in the statement of the reopened bank at this figure merely as an estimated sound value for ultimate realization and with the provision that when such an amount

had been realized, any balance over such amount was to be a part of the pool assets which went to the benefit of the creditors. The record no where shows that such an amount could be realized on them in cash at any early date. It, therefore, appears that the claim of appellants that a larger amount of cash could have been made available on the reopening of the bank is without foundation. Suffice it to say, however, even if appellant's argument were true, it would not show a deprivation of property. The reopened bank was charged with certain liability to its depositors and creditors which was to be collected from certain assets turned over to it, out of which, it might realize only the amount for which it was charged and no more. In other words, for every asset turned over to it there was a corresponding liability imposed, whether such assets were cash or other property. If the reopened bank had had in fact delivered to it cash more than sufficient to have paid a 5% to the depositors upon reopening, and were permitted by the court to hold some of the cash for distribution at a later time, it would still not be a deprivation of property. It would have held it subject to liability of its creditors, and would ultimately be received by the creditors. The bank being in receivership, the creditors had no right to demand receipt of any amount in cash until the court directed it to be paid, and the court in exercising its discretion as to when the payment should be made, could not be said to have deprived the creditor of property without due process. The facts in the case do not sustain the allegations of the appellants, but even if the facts were so different as to sustain such allegations, still it would not be depriving them of property without due process of law, nor such facts as would sustain jurisdiction in this court.

Appellants seek to assert jurisdiction on the ground that the deposits were made prior to the passage of Chapter 251

of the Laws of 1932, and was subject to the laws then in force for the benefit of depositors and the liquidation of banks. Section 3817 of the Mississippi Code of 1930, which is the liquidation statute was then in force and had been since 1914. It provided a method for the liquidation of banks when they became insolvent and closed. Under the liquidation statute, and which law covered the deposit of appellants, the right to withdraw money at will did not exist after the bank closed for liquidation and was placed in the hands of the Chancery Court. While the depositor had the right to withdraw his money as he saw fit as long as the bank was in operation and to act independently with reference to it, under the law then existing when the bank was placed in the hands of the court for liquidation, his right of independent action was lost, and he could recover his money only according to the orders of the court, and his individual rights became merged into the rights of the depositors as a class, losing all right of independent action. Section 3817 gave the court and the Superintendent of Banks broad powers and discretion. This section was construed by the Supreme Court of Mississippi in *Christensen* v. *Merchants & Marine Bank of Pascagoula*, 150 So. 375, in the following language:

> "It is competent for the legislature to confer upon the Superintendent of Banks and the Chancery Court the discretion and judgment to take such action under such discretion as would best promote the general welfare."

The amount of recovery on any deposit was by the then existing law and the liquidation statute limited to the *pro rata* amount along with the other depositors from what might be recovered from the assets of the insolvent bank. The law governing creditors of banks is more extensive than argued in appellants statement and is set out by the Su-

preme Court of Mississippi in the case of *Christensen* v. *Merchants & Marine Bank of Pascagoula, supra:*

> "The creditor in such case when he makes his deposit makes it subject to the existing law, or to that which may be enacted under the constitutional power of the legislature in such cases."

Chapter 251 of the Laws of 1932, as construed by the Supreme Court of Mississippi, is remedial in its nature, and did not change the rights of any depositors, but rather was an additional remedy furnished them for the recovery of such amounts as to which they might be entitled. The first step in its application is provided to be initiated by the depositors, and, therefore, it was a remedy provided for them. It was a valid exercise by the legislature of the police power and right to legislate for the general welfare which is not abridged by its incidental effect on private contract. It was legislation with reference to banking, which is a public utility; *Noble State Bank* v. *Haskell,* 55 Law Ed. 112, 219 U. S. 102. This was, therefore, subject to the exercise of police power of the State, and contracts are subject to legislation enacted in the exercise of the police power and must yield to the exercise of such power.

St. Louis Poster Adv. Co. v. *St. Louis,* 249 U. S. 269, 63 Law Ed. 599;
Union Drygoods Company v. *Georgia Public Service Corporation,* 248 U. S. 372, 63 Law Ed. 309;
East v. *Van Deman and L. Company,* 240 U. S. 342, 60 Law Ed. 679;
Meningault v. *Springs,* 199 U. S. 473, 50 Law Ed. 274;
Chicago & A. R. Co. v. *Tranbarger,* 238 U. S. 67, 59 Law Ed. 1204.

Such legislation not only was a valid exercise of the police power of the court, but did not impair the obligations of

the depositors contract. He was already limited by law to the recovery of such amount as might be realized from the assets of the bank in liquidation. Chapter 251 of the Laws of 1932 preserved all of such assets. It provided a method by which 75% of the depositors whose interests were bound up with any obstructing minority could proceed to do that which in their judgment was to the best interest of the depositors as a whole, but subject to the approval of the Superintendent of Banks and the Chancery Court in which the liquidation was being administered. The minority of depositors lost nothing except the right to obstruct the majority and perhaps gain an advantage over the others in the same class by reason of such obstruction. There was no impairment of contract for the reason that the depositors were to get all that they could have gotten under the procedure theretofore adopted, and in this case the petition alleged, the evidence showed, and both the lower court and the Supreme Court found as a fact that the plan proposed and authorized to be executed would result in substantially greater benefit to the 5000 depositors involved. This fact having been adjudicated by the State court on evidence presented to it, the Supreme Court of the United States will not entertain jurisdiction for the purpose of reviewing the correctness of such finding of fact.

And appellee now moves the court to dismiss the appeal herein for the following reasons:

(*a*) No question may be raised by one not a party to the litigation, whether by himself or by another for him. *Braxton County Court* v. *West Va.*, 208 U. S. 192, 52 L. Ed. 450. *Puget Sound Power Company* v. *King County*, 264 U. S. 22, 68 L. Ed. 541.

(*b*) A claimed violation of provisions of the Mississippi Constitution in the decree appealed from raises no Federal

question, and will not support jurisdiction of this Court. *Noble State Bank* v. *Haskell*, 219 U. S. 104, 55 L. Ed. 112.

(*c*) Since the bank in liquidation owed no debts to correspondent banks, the question songht to be raised in regard to the rights of correspondent banks under the Mississippi statute is moot, and will not support the jurisdiction of this court. *Berlison* v. *Commercial Cable Company*, 250 U. S. 360, 63 L. Ed. 103; *Shaffer* v. *Howard*, 249 U. S. 200, 63 L. Ed. 559.

(*d*) Whether plan and decree appealed from violate the Mississippi statutes is a question of local law, raises no Federal question, and will not support the jurisdiction of this Court. *American Railway Express Company* v. *Commonwealth of Kentucky*, 273 U. S. 269, 71 L. Ed. 639.

(*e*) The decree appealed from assures appellants equal, or greater, substantial rights than they had in ordinary liquidation of the failed bank, and no substantial right is involved in this appeal. *Home Building Association* v. *Blaisdell*, 290 U. S. 398, 78 L. Ed. 413, 54 S. Ct. 231.

(*f*) Statement of facts showing jurisdiction discloses that the statute assailed is in relation to the claimed rights of appellants as depositors in a state bank, and alleged denial to them of due process of law, and impairment of their contract by virtue of a change in the banking laws of Mississippi made after appellants had deposited money in the failed bank. Appellants had neither a contract nor any vested right under the banking statutes of Mississippi in force at the time of the making of their respective deposits. Both the old and the new banking laws were, and are, mere police regulations; and appellants acquired no vested rights thereunder. This question seems to be definitely foreclosed by decisions of the Supreme Court of Mississippi and of the Supreme Court of the United States.

Love v. *Mangum*, 160 Miss. 590; *Abie State Bank* v. *Bryan*, 282 U. S. 765, 75 L. Ed. 690; *Bank of Oxford* v. *Love*, 111 Miss. 699, 40 S. Ct. 22, 250 U. S. 603, 63 L. Ed. 1165.

(*g*) There is no properly presented substantial Federal question disclosed by the record.

Respectfully submitted,

H. H. Creekmore,
C. J. Hester,
C. R. Bolton.

APPENDIX "A".

"3817. Liquidation proceedings.—In liquidating the affairs of insolvent state banks taken over by him, the superintendent of banks shall proceed by first filing a petition in the chancery court of the county in which the bank is located, submitting the liquidation of such bank to the jurisdiction of that court and thereafter the liquidation shall proceed under the orders and directions of that court. The chancery court or the chancellor in vacation shall have full jurisdiction to make any and all orders in the course of the liquidation proceedings. The case shall be styled "In the matter of the liquidation of the * * * bank by * * * superintendent of banks," and when the board of directors of the failed bank have passed a resolution consenting to the liquidation of the bank, and requesting the superintendent of banks to take charge of its affairs for the purpose of such liquidation and authorizing an officer of the bank to waive service of process and enter the appearance of the bank to the petition, the superintendent of banks shall thereafter have full and complete control and authority over the assets and affairs of the failed bank, subject only to the orders of the chancery court to which jurisdiction of the liquidation has been submitted. Suit may be instituted by him in his name as superintendent of banks to enforce the collection of any bill or other obligation due the failed bank or to preserve the assets thereof or to enforce any right at law or in equity that might or could have been enforced by the bank as a going concern. And he may employ and retain such of the employees of the bank as he may deem necessary to aid him in the liquidation. By and with the consent of the court or of the chancellor in vacation evidenced by an order entered in the liquidation proceedings he may sell any of the property, real, personal or mixed, belonging to the bank either at private or public sale, and a deed made by him under the seal and attested by the secretary of the state banking department shall convey to the purchaser all of the rights, title and interest of the bank and of the state banking department in any such property.

"The superintendent shall cause notice to be given by advertisement in such newspaper as he may direct, once a week for six consecutive weeks, calling on all persons who may have claims against the bank (but not including deposits shown by the books of the bank which shall *prima facie* be proven claims) to present the same and make legal proof thereof, at a place and within a time specified in such notice, not less than ninety days from the date of the first publication of the notice. A copy of the notice shall be mailed to all persons whose names appear as creditors on the books of the bank. If the superintendent doubts the justice and validity of any claims or deposits, he may reject the same and serve notice of such rejection upon the claimant or depositor, either by mail or personally, and an affidavit of service of such notice, which shall be *prima facie* evidence thereof, shall be filed in the office of the banking department. An action upon a claim so rejected must be brought by petition to the chancery court having jurisdiction of the liquidation of the affairs of the bank by the claimant within six months after such service or the same shall be barred. Claims presented and allowed after the expiration of the time, fixed in the notice to creditors, shall be entitled to share in the distribution, only to the extent of the assets in the hands of the superintendent at the time claims are filed, without allowance for previous distribution. Upon taking possession of the property and assets of a bank, the superintendent shall make an inventory of its assets in duplicate, one to be filed in the office of the banking department, and one in the liquidation proceedings in the chancery court. Upon expiration of the time fixed for the presentation of claims, the superintendent shall make in duplicate a full and complete list of the claims presented, including and specifying which claims have been rejected by him, one to be filed in the office of the banking department and one in the liquidation proceedings in the chancery court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special agents of the banking department, counsel and other employees and assistants and all expenses of supervision and liquidation shall be fixed by the superintendent

subject to the approval of the chancery court, or the chancellor in vacation. When the compensation for the various parties aiding in the liquidation is fixed and approved the same shall be paid out of the funds of such bank in the hands of the superintendent and shall be a prior charge and lien on such assets. The money collected by the superintendent shall be, from time to time, deposited in one or more state depositories. At any time after the expiration of the date fixed for the presentation of claims, the superintendent may, out of funds remaining in his hands, after the payment of expenses, declare and pay one or more dividends to creditors, and as soon as practicable thereafter, he shall declare and pay a final dividend, such dividend, to be paid to such persons and in such amounts and upon such notice as may be directed by the chancery court having jurisdiction of the liquidation. Objections to any claims or deposits not rejected by the superintendent may be made by any party interested, by filing a copy of such objections with the superintendent, who shall present the same to the court having jurisdiction before the time of the next application to declare a dividend. The court may make proper provisions for unproven or unclaimed deposits. When the superintendent shall have paid to each and every depositor and creditor of such bank whose claim or claims shall have been duly proven and allowed, the full amount thereof, and shall have made proper provisions for unclaimed and unpaid deposits, or dividends, and shall have paid all the expenses of liquidation, all out of the assets of the failed bank, and there still remains in his hands any assets thereof, he shall call a meeting of the stockholders of such bank by giving thirty days' notice by publication once a week for three consecutive weeks in one or more newspapers published in the county where the principal office of such bank was located. At such meeting the stockholders shall elect by ballot an agent or agents who shall wind up the affairs of the bank, and in so determining such stockholders shall vote by ballot, in person or by proxy each share of stock entitling the holder to one vote and the majority vote of the stock shall be necessary to an election, a majority of the stock present and voting

in person or by proxy being necessary. Such agent or agents shall execute and file with the banking department a bond in such amount with such security and in such form as shall be approved by the superintendent of banks conditioned for the faithful performance of all the duties of his or their trust, and so conditioned that any party aggrieved may bring or cause to be brought suit on said bond, and thereupon the superintendent shall transfer and deliver to such agent or agents all the undivided and uncollected or other assets of such corporation then remaining in his hands and take a receipt therefor signed by such agent or agents, and upon such transfer and delivery shall be discharged from any and all further liability to the bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall act for and make distribution of the property of said bank as is herein provided in case of distribution by the banking department, except that the expense thereof shall be subject to the direction and control of the court having jurisdiction of the cause. In case of the death, removal or refusal to act of any such agent or agents selected by the stockholders the stockholders, on the same notice to be given by the superintendent upon proof of such death, removal or refusal to act, being filed with him, and by the same vote hereinbefore provided, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the banking department for six months after the order for final distribution (at such rate of interest as is allowed by said state depositories) shall be by him deposited in one or more state depositories to the credit of the banking department in trust for the several depositors in and creditors of the liquidated bank from which they were received, and the superintendent shall pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their rights to same. In case of doubtful or conflicting claims, he may require an order from the court having jurisdiction authorizing and directing the payment thereof.

He may apply the interest earned by the money so held by him toward defraying the expense in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same. The banking department shall file annually with the governor of this state a report of the names of the banks taken possession of and liquidated and the sum of unclaimed and unpaid deposits or dividends with respect to each of them respectively, together with a statement of the amount of interest earned by such unclaimed dividends, which reports the governor must submit to the legislature.

"In event the assets of the failed bank are not sufficient to pay the claims of all creditors and depositors in full, then in such event, when the superintendent shall have realized on all of the assets of such bank, and has applied the same toward the payment of such claims in the manner provided by law, he may file with the chancery court having jurisdiction of the liquidation a final report and upon the approval and allowance of this report he shall be discharged from any further liability to the bank and its creditors, except as to the right of depositors to be paid any remaining balance due them out of the guaranty fund as provided by law."

APPENDIX "B."

In the statement of facts by appellants to which reference has heretofore been made, a claim is made that there is a loss of $152,485.90 in assets between the total assets shown on the liquidation statement and the total assets shown in the pool account and in the reopened bank. This is a mere difference in the manner of presenting said statements, and is not in fact a discrepancy of real assets as charged by the appellants.

It will be noted that the statement on page 21 of the Record which shows assets of $1,901,672.92 shows an item of taxes and expenses of all kinds aggregating $109,855.87 as an asset, which, of course, is not an asset except for the purpose of bookkeeping. This $109,855.87 has been eliminated

from the statement on page 21, and on page 24, column 1, will be found a statement after the elimination of the $109,855.87 item. This statement in column 1, on page 24, shows assets of $1,791,817.05, which is exactly $109,855.87 less than shown on page 21. All figures on both statements are the same except that for $109,855.87, taxes and other expenses is eliminated on the assets side, and there is also eliminated from the liability side of the same statement Earnings Account of $87,928.79, which leaves a difference of $21,927.08, between the Earnings and Expense Accounts, which $21,927.08 has been eliminated from the Margin Account, which Margin Account in column 1, on page 24, is this amount less than the amount at which it is carried on page 21. Therefore, this accounts for $109,855.87 of the so called $152,485.90 discrepancy.

The balance of the so-called discrepancy of $42,630.03, which is the difference between the $152,485.90 and the $109,855.87, which has already been accounted for, is accounted for as follows:

First, $55,000.00 is eliminated from the stockholders' liability account on account of the fact that under the reopening plan of the bank stockholders who paid in 50% of their stock liability to provide capital for the reopened bank were released from the other 50%, which fact is fully set out in the testimony in the record and in the decree authorizing the reopening of the bank. This $55,000.00 added to $109,855.87, above referred to, would make a difference of $164,855.87, whereas, the net difference is only $152,485.90, making an overage of approximately $12,500.00, according to appellants' figures, but as a matter of fact there is no overage and this difference is accounted for by additions to the Loans and Discounts Account, Bond Account, Real Estate Account and Cash Account, which additions aggregate $40,284.97, and after giving effect to the reduction in the stock liability account of $27,975.91, gives an actual net increase in the assets of $12,309.06 as reflected in column 2, page 24, of the Record, which column reflects the statement of the liquidation after giving effect to the $55,000.00 collected for capital stock.

Totals of columns No. 3 and No. 4 should and will equal column No. 2 on page 24 if $55,000.00 is added to the total of these columns No. 3 and No. 4, which is the amount of the stock liability released, and after adding $60.86 to the Overdraft Account, page 24 of the Record, in column No. 4, shows Overdrafts of $4,041.94, which is evidently a typographical error. Same should show $4,101.94, which is $60.86 more than the Overdrafts shown in column 2; therefore, this $60.86 shows up in the difference in the totals of columns No. 3 and No. 4 against the total of column No. 2.

Reconcilement of the total of column #2 with the totals of columns No. 3 and No. 4 is as follows:

Column No. 2, total		$1,804,126.11
Column No. 3, total	$1,281,972.47	
Column No. 4, total	467,214.50	
Making total of columns No. 3 and No. 4 of	$1,749,186.97	
Plus amount released from Stock Liability Account referred to above	55,000.00	
Making total of	$1,804,186.97	
Less Overdrafts increase referred to above	60.86	
Making a total of Columns No. 3 and No. 4 of		$1,804,126.11

which agrees with the total of this column set out on page No. 24 in the Record.

Therefore, the difference of $152,485.90 charged by appellants is accounted for.